

UNITED STATES COURT  
DISTRICT OF MASSACHUSETTS

TERRI J. PEDATO, As Mother and Next Friend of RICHARD MORRILL Plaintiff VS.	)	)	)	)	)	)	CIVIL ACTION
FRED G. ARRIGG, JR., M.D., Defendant	)	)	)	)	)	NO: 03CV-12223 RGS	

**JOINT MOTION TO AMEND DISCOVERY PLAN**

Now come the parties in the above referenced matter and respectfully request that this Honorable Court amend the Discovery Plan by enlarging the time to conclude all discovery, as set forth below. As grounds therefore the parties state as follows:

- (1) This is a complex medical malpractice action in which the plaintiff alleges that Dr. Arrigg negligently performed a revision tympanomastoidectomy resulting in an encephalocele and brain abscess.
- (1) There are numerous physicians who have treated the minor plaintiff, Richard Morrill and multiple depositions of non-party witnesses that must be taken in order to adequately assess the plaintiff's course of treatment and alleged damages.
- (3) The case was transferred to the Suffolk Superior Court for the limited purpose of convening a medical malpractice tribunal pursuant to M.G.L. ch. 231 § 60B and the case was stayed pending the decision of the tribunal. (Exhibit A). Despite numerous requests, both in writing and on the phone, a medical malpractice tribunal did not occur until October of 2006 given the reported difficulties of retaining an otolaryngologist to sit as the medical member of the panel. On or about October 27, 2006 that medical malpractice tribunal went forward with a finding in favor of the plaintiff.

- (4) The case was not returned to the Federal Court until March 5, 2007. (Exhibit B).
- (5) Counsel for both parties have worked diligently to schedule the deposition of the defendant Dr. Arrigg. Given numerous scheduling conflicts, Dr. Arrigg's deposition has been scheduled for August 1, 2007 and is expected to go forward at that time.
- (6) Once the deposition of Dr. Arrig is taken, counsel can determine what additional depositions, including but not limited to expert depositions are required.

The parties respectfully request that this Honorable Court enlarge the time allotted in the proposed discovery plan as attached hereto so they may adequately prepare for trial.

The Plaintiff,  
By her attorney,  
JOSEPH G. ABROMOVITZ, P.C.

The Defendant,  
By his attorneys,  
FICKSMAN & CONLEY, LLP

/s/ Joseph G. Abromovitz  
JOSEPH G. ABROMOVITZ  
858 Washington Street, 3<sup>rd</sup> Floor  
Dedham, MA 02026  
(781) 239-1080

/s/ Nicole M. Mason  
NICOLE M. MASON, BBO # 647915  
KENNETH D. WEISS, BBO # 521240  
98 North Washington Street, Suite 500  
Boston, MA 02114  
(617) 720-1515

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2007, I served the above notice on the plaintiff in the above entitled action by mailing a copy thereof, postage prepaid, to their counsel of record Joseph G. Abromovitz, Esq., 858 Washington Street - Third Floor, Dedham, MA 02026.

/s/ Nicole M. Mason  
**NICOLE M. MASON**

UNITED STATES COURT  
DISTRICT OF MASSACHUSETTS

TERRI J. PEDATO, As Mother and Next Friend of RICHARD MORRILL	)	
Plaintiff	)	
VS.	)	CIVIL ACTION
FRED G. ARRIGG, JR., M.D., Defendant	)	NO: 03CV-12223 RGS

**PROPOSED AMENDED DISCOVERY PLAN**

1. All depositions (except *de bene esse* and expert depositions) shall be concluded on or before September 28, 2007;
2. Any motions pursuant to Fed. R. Civ. P. 56 shall be brought on or before October 12, 2007;
3. Plaintiff's expert disclosure shall be made on or before October 31, 2007;
4. Defendant's expert disclosure shall be made on or before November 30, 2007;
5. Expert depositions are to be conducted on or before February 29, 2008.

The Plaintiff,  
By her attorney,  
JOSEPH G. ABROMOVITZ, P.C.

The Defendant,  
By his attorneys,  
FICKSMAN & CONLEY, LLP

/s/ Joseph G. Abromovitz  
JOSEPH G. ABROMOVITZ  
858 Washington Street, 3<sup>rd</sup> Floor  
Dedham, MA 02026  
(781) 239-1080

/s/ Nicole M. Mason  
NICOLE M. MASON, BBO # 647915  
KENNETH D. WEISS, BBO # 521240  
98 North Washington Street, Suite 500  
Boston, MA 02114  
(617) 720-1515

**CERTIFICATE OF SERVICE**

I hereby certify that on April 26, 2007 I served the above notice on the plaintiff in the above entitled action by mailing a copy thereof, postage prepaid, to their counsel of record Joseph G. Abromovitz, Esq., 858 Washington Street - Third Floor, Dedham, MA 02026.

/s/ Nicole M. Mason  
**NICOLE M. MASON**

**EXHIBIT A**

UNITED STATES COURT  
 DISTRICT OF MASSACHUSETTS **FILED**  
 CLERKS OFFICE

6/1/04  
 M.P.  
 TERRI J. PEDATO, As Mother and Next )  
 Friend of RICHARD MORRILL )  
 Plaintiff )  
 VS. )  
 FRED G. ARRIGG, JR., M.D., )  
 Defendant )

2004 JUN -3 A 11:55

CIVIL ACTION NO. 03CV-12223-RGS

**MOTION OF THE DEFENDANT, FRED G. ARRIGG, M.D., TO TRANSFER  
 THE CLAIMS AGAINST HIM TO MASSACHUSETTS  
 SUPERIOR COURT FOR THE LIMITED PURPOSE OF CONVENING A  
 MEDICAL MALPRACTICE TRIBUNAL**

Now comes the Defendant Fred G. Arrigg, M.D. and hereby moves pursuant to M.G.L. c. 231, § 60B that the claims against him be transferred to the Massachusetts Superior Court for the limited purpose of convening a medical malpractice tribunal. In support of this motion the Defendant relies on the memorandum attached hereto.

Respectfully submitted,  
 By his attorneys,

FICKSMAN & CONLEY, LLP

KENNETH D. WEISS, BBO# 521940  
 NICOLE M. MASON, BBO# 647915  
 98 North Washington Street, Suite 500  
 Boston, MA 02114  
 (617) 720-1515

**CERTIFICATE OF SERVICE**

I, Nicole M. Mason, attorney for said defendant, hereby certify that I have this day served a copy of the foregoing document upon all parties, via first class mail, postage prepaid, directed to Joseph G. Abromovitz, Esq., 858 Washington Street - Third Floor, Dedham, MA 02026.

Signed under the pains and penalties of perjury.

Dated: June 1, 2004

NICOLE M. MASON

**EXHIBIT B**

**Commonwealth of Massachusetts  
County of Suffolk  
The Superior Court**

CIVIL DOCKET#: **SUCV2004-03235-C**

RE: Pedato et al v Arrigg Jr MD

TO: Kenneth Weiss, Esquire  
Ficksman & Conley  
98 North Wahington Street  
Suite 500  
Boston, MA 02114

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**NOTICE OF DOCKET ENTRY**

You are hereby notified that on **03/05/2007** the following entry was made on the above referenced docket:

**TRANSFERRED to USDC**

Dated at Boston, Massachusetts this 5th day of March,  
2007.

Michael Joseph Donovan,  
Clerk of the Courts

BY: Anna K. Flaherty  
Assistant Clerk

Telephone: 617-788-8172

**Disabled individuals who need handicap accommodations should contact the Administrative Office  
of the Superior Court at (617) 788-8130**

## COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT  
CIVIL ACTION  
NO: 03-cv-12223

Terri J. Pedato et al

PLAINTIFF

v.

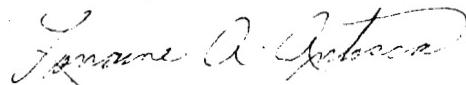
Fred H. Arriag Jr M.D.

DEFENDANT

PLAINTIFF

ORDERAFTER A MEDICAL MALPRACTICE TRIBUNAL HEARING IN SUFFOLK  
SUPERIOR COURT:THE ABOVE ENTITLED ACTION IS HEREBY ORDERED RETURNED TO  
THE United States District Court : DOCKET 03cv12223RGS

BY THE COURT, Spurlock, J.



ASST. CLERK

DATED: March 5, 2007

*Initials 3/5/07*  
L005.G.A. - J.G.A.  
K.W. - F+C  
*PC*  
*121k*